

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE
MIDDLE DISTRICT OF ALABAMA, EASTERN DIVISION

UNITED STATES OF AMERICA)	
)	
v.)	CRIMINAL ACTION NO.
)	3:07cr258-MHT
CHRISTOPHER SMITH)	(WO)
)	

OPINION AND ORDER

This case is now before the court on the United States of America's unopposed motion to continue trial. For the reasons set forth below, the court finds that jury selection and trial, now set for October 14, 2008, should be continued pursuant to 18 U.S.C. § 3161(h)(8).

While the granting of a continuance is left to the sound discretion of the trial judge, United States v. Stitzer, 785 F.2d 1506, 1516 (11th Cir.), cert. denied, 479 U.S. 823 (1986), the court is limited by the requirements of the Speedy Trial Act, 18 U.S.C.A. § 3161. The Act provides in part:

"In any case in which a plea of not guilty is entered, the trial of a defendant charged in an ... indictment with the commission of an offense shall commence within seventy days from the filing date (and making public) of the ... indictment, or from the date the defendant has appeared before a judicial officer of the court in which such charge is pending, whichever date last occurs."

18 U.S.C.A. § 3161(c)(1). The Act excludes from the 70-day period any continuance based on "findings that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial." § 3161(h)(8)(A). In granting such a continuance, the court may consider, among other factors, whether the failure to grant the continuance would "result in a miscarriage of justice." § 3161(h)(8)(B)(i) .

The court concludes that, in this case, a continuance is necessary to provide the parties with the time to complete and file the paperwork associated with defendant Christopher Smith's acceptance into pre-trial diversion, which will dispose of this matter. Thus, the ends of

justice served by granting a continuance outweigh the interest of the public and Smith in a speedy trial.

Accordingly, it is ORDERED as follows:

(1) The United States of America's motion to continue (Doc. No. 19) is granted.

(2) Defendant Christopher Smith's trial and jury selection are continued to the criminal term of court commencing February 23, 2009, at 10:00 a.m., at the G.W. Andrews Federal Building and Courthouse, 701 Avenue A, Opelika, Alabama.

DONE, this the 10th day of October, 2008.

/s/ Myron H. Thompson
UNITED STATES DISTRICT JUDGE